

non-final," the subject office action is taken to be non-final.

Probably due to an inadvertent mistake, there was also a checkmark in the box "This action is FINAL." This is assumed to be in error because final rejection at this stage would be premature, pursuant to MPEP 706.07(d). "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement..." 37 CFR 706.07(a). In the present case, the Examiner has introduced a new ground of rejection that was not necessitated by Applicant's actions. Applicant has not made a single claim amendment to date. Accordingly, the present action would be premature if final.

If Examiner intentionally checked the "This action is FINAL" box, then the foregoing arguments constitute a request to withdraw the final rejection as premature, pursuant to MPEP 706.07(d).

ALLOWED CLAIMS

Claims 1-20, 22-29, and 31-38 have been allowed.

35 USC 103 REJECTIONS

The office action dated May 22, 2005 rejected claims 21 and 30 under 35 USC 103(a) as being unpatentable over the combination of Ewald in combination with U.S. Patent No. 5,600,831 to Levy et al. The enclosed affidavits remove Ewald as a reference (as discussed below), and Ewald is no longer applicable to the present

application. Accordingly, the rejection based on the proposed Ewald-Levy combination is moot, and all claims are in immediate condition for allowance.

SUBMITTAL OF AFFIDAVIT UNDER 37 CFR 1.131

Affidavits under 37 CFR 1.131 are submitted herewith to establish invention of the subject matter of the rejected claims prior to the effective date of the U.S. Publication No. 2003/0014384 to Ewald et al. ("Ewald"), and thereby remove Ewald as a prior art reference.

"A rejection based on 35 U.S.C. 102(e) can be overcome by . . . [f]iling an affidavit or declaration under 37 CFR 1.131 showing prior invention, if the reference is not a U.S. patent or a U.S. patent application publication claiming the same patentable invention as defined in 37 CFR 1.601(n)." MPEP 706.02(b). "When a prior U.S. patent, U.S. patent application publication, or international application publication is not a statutory bar, a 35 U.S.C. 102(e) rejection can be overcome by antedating the filing date . . . of the reference by submitting an affidavit or declaration under 37 CFR 1.131. . ." MPEP 2136.05.

The relevant date to overcome is Ewald's U.S. Application filing date, namely, February 22, 2001. "A person shall be entitled to a patent unless . . . the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent. . ." 35 USC 102(e).

The enclosed affidavits establish actual reduction to practice prior to February 22, 2001. In particular, before February 22, 2001, the inventors prepared a prototype of

the claimed invention and demonstrated to several people that the prototype worked for its intended purposes.

35 USC 112 REJECTIONS

Claims 21, 30 were rejected under 35 USC 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements. It was alleged that such omission amounts to a gap between necessary structural connections. [Office Action: page 2] The claims were said to be indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. [Page 3]

Claims 21, 30 are allowable under 35 USC 112 for the following reasons. First, by applying a straightforward, uncomplicated, and common sense reading of the claims that would be apparent to any ordinarily skilled artisan, the claims (as-is) already satisfy the antecedent basis requirements of 35 USC 112. This is explained in detail as follows:

- Claim 21 recites "the controls", but the office action could not find antecedent basis for this limitation in the claim. [Office Action: page 2] Attention is directed to "multiple query form controls," which provides clear and unambiguous antecedent basis for "the controls."
- Claims 21, 30 recite "the assembler", but the office action could not find antecedent basis for this limitation in the claim. [Office Action: page 2] Attention is directed to "a query assembler," which provides clear and unambiguous antecedent basis for "the assembler."

- Claims 21, 30 recite "annotations", but the office action could not find antecedent basis for this limitation in the claim. [Office Action: page 2] Attention is directed to "multiple query form controls," which provides clear and unambiguous antecedent basis for "the annotations."
- As to claims 21, 30, it was said to be unclear which controls that a compiler including access to. [Office Action: page 2] Attention is directed to "multiple query form controls" in claim 21, which provides clear and unambiguous antecedent basis for "the controls" as found in "a compiler including access to the controls..."
- As to claims 21, 30, the office action posed a question regarding "query assembler" and "the assembler," whether they are the same one or they are different. [Office Action: page 3] Since "the assembler" occurs after "query assembler" and there is no other occurrence of "assembler" in the claim, logically "query assembler" provides antecedent basis for "the assembler."

As shown above, claims 21, 30 (as-is) already provide sufficient antecedent basis that is clear by applying a straightforward, uncomplicated, and common sense reading of the claims that would be apparent to any ordinarily skilled artisan. The claims (as-is) fully satisfy the antecedent basis requirements of 35 USC 112.

Even if, for the sake of argument, antecedent basis were not 100% perfect in these claims, this is not necessarily problematic under section 112. Obviously, according to the MPEP, "the failure to provide explicit antecedent basis for the terms does not always render a claim indefinite." MPEP 2173.05(e). If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite. *Bose Corp. v. JBL, Inc.*, 274 F.3d 1354, 1359 (Fed. Cir. 2001). Moreover,

an antecedent basis can be present by implication. Slimfold Manufacturing Co. v. Kinkead Industries, Inc., 810 F.2d 1113, 1116 (Fed. Cir. 1987).

When the meaning of the claim would reasonably be understood by persons of ordinary skill when read in light of the specification, the claim is not subject to invalidity upon departure from the protocol of "antecedent basis." Energizer Holdings, Inc. v. ITC, Cast No. 05-1018 (Fed. Cir. 2006). The definiteness inquiry focuses on whether those skilled in the art would understand the scope of the claim when the claim is read in light of the rest of the specification. Union Pac. Res. Co. v. Chesapeake Energy Corp., 236 F.3d 684, 692 (Fed. Cir. 2001).

The office action does not explain how the alleged defects of claims 21, 30 rise to sufficient level that ordinarily skilled artisans could not reasonably ascertain the claim scope. Indeed, ordinarily skilled artisans could reasonably ascertain the claim scope without difficulty.

CONCLUSION

In view of the foregoing, all claims are in condition for allowance. Applicant request favorable reconsideration and allowance of the pending claims.

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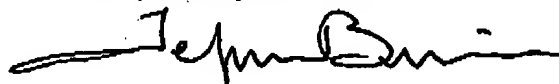
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If any fees are required by this submission, an appropriate fee submittal sheet is enclosed herewith. If fees are required yet this sheet is inadvertently missing, or the fees are incorrect in amount, please charge the charge the required fees (or credit any overpayment) to Deposit Account No. 07-1445.

Respectfully submitted,



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